

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>RASHEENA PHINISEE, Individually and on behalf of A.P., a minor, as her parent and natural guardian,</p> <p style="text-align: center;">vs.</p> <p>DEREK R. LAYSER, ESQUIRE; GILBERT G. SPENCER, JR., ESQUIRE; SPENCER & ASSOCIATES; and LAYSER & FREIWALD, P.C.</p>	<p>CIVIL ACTION NO.</p>
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NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441(a) and 1446, Defendants Derek R. Layser, Esquire and Layser & Freiwald, PC, hereby give notice of removal of this action from the Court of Common Pleas for Philadelphia County, April Term 2014, No. 2183, to the United States District Court for the Eastern District of Pennsylvania and in support thereof aver as follows:

1. This action was commenced via the filing of a Writ of Summons on April 21, 2014. Thereafter, on June 10, 2014, Plaintiffs filed a Complaint in the Court of Common Pleas of Philadelphia County. A true and correct copy of Plaintiffs' Complaint is attached hereto as **Exhibit "A."**

2. Service of the Complaint was effectuated on June 10, 2014.

3. The Plaintiffs allege that they are "resident[s] of the State of California with an address at 909 W. Bush Street, Apartment 29, Lemoore, CA 93245 Id. at ¶¶1-2.

4. The Complaint, alleging legal malpractice against the Defendants, sets forth seven counts sounding in negligence, breach of fiduciary duty, misrepresentation and concealment, negligent misrepresentation, respondeat superior, breach of contract, and punitive damages. Id.

5. As a result of the alleged misconduct, Plaintiffs claim Defendants withheld key information, from which “Phinisee could have made an informed decision concerning the propriety of a settlement” in excess of \$1 million, and, as a result, Plaintiffs suffered and will suffer in the future significant general, special, and punitive damages. *Id.* at ¶¶25-26, 30, 32, 34, 38, 40.

6. If a defendant seeks to remove a pending state court action, it “shall file in the district court of the United States for the district and division within which such action is pending a notice of removal . . .” 28 U.S.C. §1446(a).

7. The notice of removal “shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting for the claim for relief upon which such action or proceeding is based . . .” 28 U.S.C. §1446(b).

8. Pursuant to federal law, this Court “shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different states; [and] (2) citizens of a State and citizens or subjects of a foreign state . . .” 28 U.S.C. §1332(a)(1)-(2).

9. In this case, there is complete diversity of citizenship between the parties, as the Plaintiffs are individuals residing in the State of California, at 909 W. Bust Street, Apartment 29, Lemoore, California 93245, while defendant Derek R. Layser, Esquire is an attorney licensed to practice in Pennsylvania with offices located at 1500 Walnut Street, 18th Floor, Philadelphia, PA 19102, defendant Layser & Freiwald, PC is a professional corporation registered with the State of Pennsylvania with offices located at 1500 Walnut Street, 18th Floor, Philadelphia, Pa 19102, defendant Gilbert G. Spencer, Jr., Esquire is an attorney licensed to practice in Pennsylvania, with primary offices located at 36 Arista Drive, Suite 200, Dix Hills, NY 11746, and defendant

Spencer and Associates is a limited liability partnership registered in the State of New York with primary offices located at 36 Arista Drive, Suite 200, Dix Hills, NY 11746.

10. The amount in controversy in this case exceeds \$75,000, exclusive of interest and costs, and the threshold has been met for this Court to exercise diversity jurisdiction.

11. Therefore, this Court has original jurisdiction over the action pursuant to 28 U.S.C. §1332. There is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

12. This action is properly and timely removed pursuant to 28 U.S.C. §1441(a) and in accordance with the requirements of 28 U.S.C. §1446.

13. This notice of removal is being filed within thirty days after service of the Complaint and with confirmation and notice that the amount in controversy exceeds \$75,000, thereby fulfilling the requirements for invoking the diversity jurisdiction of this Court. 28 U.S.C. §1446(b)-(c).

14. Further, pursuant to 28 U.S.C. § 1446(d), Petitioners/Defendants are, concurrent with the filing of this Petition, providing notice of the removal of this matter to the Court of Common Pleas of Philadelphia County, and to all parties.

15. Co-Defendants do not object to the removal of this matter.

WHEREFORE, Petitioners/Defendants Derek R. Layser, Esquire and Layser & Freiwald, P.C. hereby remove the above action now pending in the Court of Common Pleas of Philadelphia County, to the United States District Court for the Eastern District of Pennsylvania.

Respectfully Submitted,

**WEBER GALLAGHER SIMPSON
STAPLETON, FIRES & NEWBY, LLP**

By: 

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*Attorneys for Defendants
Derek R. Layser, Esquire, and
Layser & Freiwald, P.C.*

Dated: June 20, 2014

CERTIFICATE OF SERVICE

I, Shannon R. Pierce, Esquire, do hereby certify that on the date indicated below, I served via electronic mail, a true and correct copy of the within Notice of Removal on the following counsel of record:

Dennis L. Freidman, Esquire
1515 Market Street, Suite 714
Philadelphia, PA 19102
Attorney for Plaintiffs

Jeffrey B. McCarron
Swartz Campbell LLC
Two Liberty Place
50 S. 16th Street, 28th Floor
Philadelphia, PA 19102

Shannon R. Pierce
Shannon R. Pierce, Esquire

Date: June 20 2014